

AMENDED IN ASSEMBLY JULY 5, 2012
AMENDED IN ASSEMBLY JUNE 20, 2012
AMENDED IN SENATE APRIL 30, 2012

SENATE BILL

No. 1549

Introduced by Senator Vargas

February 24, 2012

An act to add Chapter 6.6 (commencing with Section 6950) to Part 1 of Division 2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1549, as amended, Vargas. Transportation projects: alternative project delivery methods.

Existing law sets forth the requirements for the solicitation and evaluation of bids and the awarding of contracts by state agencies for projects, as specified, and for local agencies for public works contracts, as specified.

This bill would allow the San Diego Association of Governments to utilize alternative project delivery methods, as defined, for public transit projects within its jurisdiction. The bill would also, upon completion of a project, require a progress report to be submitted by the San Diego Association of Governments to its governing board and would require the report to be made available on its Internet Web site. This bill would require specified information to be verified under oath, thus imposing a state-mandated local program by expanding the scope of an existing crime. The bill would provide that its provisions are severable.

This bill would make legislative findings and declarations as to the necessity of a special statute for San Diego regional transportation entities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 6.6 (commencing with Section 6950) is
2 added to Part 1 of Division 2 of the Public Contract Code, to read:

3
4 CHAPTER 6.6. ALTERNATIVE PROJECT DELIVERY PROGRAM:
5 CONSTRUCTION MANAGER/GENERAL CONTRACTOR AUTHORITY

6
7 6950. The Legislature finds and declares all of the following:

8 (a) The alternative public works project delivery methods
9 authorized under this chapter should be evaluated for the purposes
10 of exploring whether the potential exists for reduced project costs,
11 expedited project completion, or design features that are not
12 achievable through the traditional project delivery methods.

13 (b) The design sequencing and Construction Manager/General
14 Contractor project delivery methods rely on existing
15 design-bid-build and design-build procurement methods
16 respectively and have been successfully used by both public and
17 private sector entities in California and other states for over a
18 decade on projects that require a quick startup as they allow
19 construction to begin before the design plans are complete for the
20 entire project.

21 (c) Both methods also have the benefit of allowing for earlier
22 collaboration between the project owner and construction
23 contractor. ~~A demonstration program for alternative project~~
24 ~~delivery methods will allow for a careful examination of the~~
25 ~~benefits and challenges associated with these methods.~~

26 (d) This chapter shall not be deemed to provide a preference
27 for these project delivery methods over other delivery
28 methodologies.

29 6951. For purposes of this chapter, the following definitions
30 apply:

1 (a) “Alternative project delivery method” means either
2 Construction Manager/General Contractor method or design
3 sequencing.

4 (b) “Construction Manager/General Contractor method” or
5 “CMGC” means a project delivery method using a best value
6 procurement process in which a construction manager is procured
7 to provide preconstruction services during the design phase of the
8 project and construction services during the construction phase of
9 the project. The execution of the design and the construction of
10 the project may be in sequential phases or concurrent phases.

11 (c) “Construction manager” means a partnership, corporation,
12 or other legal entity that is able to provide appropriately licensed
13 contracting and engineering services as needed pursuant to a
14 CMGC contract.

15 (d) “Design sequencing” means a method of project delivery
16 that enables the sequencing of design activities to permit each
17 construction phase to commence when the design for that phase
18 is complete, instead of requiring design for the entire project to be
19 completed before commencing construction.

20 (e) “Department” means the Department of Transportation as
21 established under Part 5 (commencing with Section 14000) of
22 Division 3 of the Government Code.

23 (f) “San Diego Association of Governments” means the
24 consolidated agency created pursuant to Chapter 3 (commencing
25 with Section 132350) of Division 12.7 of the Public Utilities Code.

26 6952. (a) Subject to the limitations of this chapter, the San
27 Diego Association of Governments may utilize the alternative
28 project delivery methods for public transit projects within the
29 jurisdiction of the San Diego Association of Governments.

30 (b) The San Diego Association of Governments may enter into
31 an alternative project delivery method contract pursuant to this
32 chapter if, after evaluation of the traditional design-bid-build
33 process of construction and of the alternative project delivery
34 method in a public meeting, the San Diego Association of
35 Governments makes a written finding that use of the alternative
36 project delivery method on the specific project under consideration
37 will accomplish one or more of the following objectives: reduce
38 project costs, expedite the project’s completion, or provide features
39 not achievable through the design-bid-build method. This finding
40 must be made prior to the San Diego Association of Governments

1 entering into an alternative project delivery method contract. In
2 the alternative project delivery method proposal, the written
3 findings shall be included as part of any application for state funds
4 pursuant to this chapter.

5 6953. (a) All CMGC contracts awarded pursuant to this chapter
6 shall be subject to the procurement method requirements for
7 professional services contracts set forth in Section 132352.4 of the
8 Public Utilities Code, except insofar as they may conflict with the
9 provisions of this chapter.

10 (b) All contracts awarded using the design sequencing project
11 delivery method shall be subject to Chapter 10 (commencing with
12 Section 4525) and Chapter 10.1 (commencing with Section
13 4529.10) of Division 5 of the Government Code and Part 1
14 (commencing with Section 1100) of, Chapter 1 (commencing with
15 Section 10100) of Part 2 of, and Part 3 (commencing with Section
16 20100) of, Division 2 of this code, as applicable, except that
17 construction may be commenced as specified in subdivision (d)
18 of Section 6951.

19 6954. (a) If a contract for CMGC services is entered into
20 pursuant to this chapter and includes preconstruction services by
21 the construction manager, the San Diego Association of
22 Governments shall enter into a written contract with the
23 construction manager for preconstruction services, under which
24 the San Diego Association of Governments shall pay the
25 construction manager a fee for preconstruction services in an
26 amount agreed upon by the San Diego Association of Governments
27 and the construction manager. The preconstruction services contract
28 may include fees for services to be performed during the contract
29 period; provided, however, the San Diego Association of
30 Governments shall not request or obtain a fixed price or a
31 guaranteed maximum price for the construction contract from the
32 construction manager or enter into a construction contract with
33 the construction manager until after the San Diego Association of
34 Governments has entered into a services contract. A preconstruction
35 services contract shall provide for the subsequent negotiation for
36 construction of all or any discrete phase or phases of the project
37 and shall provide for the San Diego Association of Governments
38 to own the design plans and other preconstruction services work
39 product.

1 (b) A contract for construction services will be awarded after
2 the plans have been sufficiently developed and either a fixed price
3 or a guaranteed maximum price has been successfully negotiated.
4 In the event that a fixed price or a guaranteed maximum price is
5 not negotiated, the San Diego Association of Governments may
6 award the contract for construction services utilizing any other
7 procurement method authorized by law.

8 (c) The construction manager shall perform not less than 30
9 percent of the work covered by the fixed price or guaranteed
10 maximum price agreement reached. Work that is not performed
11 directly by the construction manager shall be bid to subcontractors
12 pursuant to Section 6955.

13 6955. All subcontractors bidding on contracts pursuant to this
14 chapter shall be afforded the protections contained in Chapter 4
15 (commencing with Section 4100).

16 6956. (a) Notwithstanding any other provision of this chapter,
17 for a project authorized under this chapter that will be constructed
18 on a state-owned right-of-way, the department is the responsible
19 agency for the performance of project development services,
20 including performance specifications, preliminary engineering,
21 prebid services, the preparation of project reports and
22 environmental documents, and construction inspection services.
23 The department is also the responsible agency for the preparation
24 of documents that may include, but need not be limited to, the size,
25 type, and desired design character of the project, performance
26 specifications covering quality of materials, equipment, and
27 workmanship, preliminary plans, and any other information deemed
28 necessary to describe adequately the needs of the transportation
29 entity.

30 (b) The department may use department employees or
31 consultants to perform the services described in subdivision (a),
32 consistent with Article XXII of the California Constitution.
33 Department resources, including personnel requirements, necessary
34 for the performance of those services shall be included in the
35 department's capital outlay support program for workload purposes
36 in the annual Budget Act.

37 6957. Nothing in this chapter affects, expands, alters, or limits
38 any rights or remedies otherwise available at law.

39 6958. (a) Upon completion of a project using an alternative
40 project delivery method, the San Diego Association of

1 Governments shall prepare a progress report to its governing body.
2 The progress report shall include, but shall not be limited to, all
3 of the following information:

- 4 (1) A description of the project.
- 5 (2) The entity that was awarded the project.
- 6 (3) The estimated and actual costs of the project.
- 7 (4) The estimated and actual schedule for project completion.
- 8 (5) A description of any written protests concerning any aspect
9 of the solicitation, bid, proposal, or award of the project, including,
10 but not limited to, the resolution of the protests.
- 11 (6) An assessment of the prequalification process and criteria
12 utilized under this chapter if the CMGC procurement method is
13 used.
- 14 (7) A description of the method used to evaluate the bid or
15 proposal, including the weighting of each factor and an assessment
16 of the impact of this requirement on a project.
- 17 (8) A description of any challenges or unexpected problems
18 that arose during the construction of the project and a description
19 of the solutions that were considered and ultimately implemented
20 to address those challenges and problems.
- 21 (9) Recommendations to improve the alternative project delivery
22 methods authorized under this chapter.

23 (b) The progress report shall be made available on the San Diego
24 Association of Governments' Internet Web site.

25 6959. (a) The provisions of this chapter are severable. If any
26 provision of this chapter or its application is held invalid, that
27 invalidity shall not affect other provisions or applications that can
28 be given effect without the invalid provision or application.

29 (b) Contracts awarded pursuant to this section shall be valid
30 until the project is completed.

31 SEC. 2. The Legislature finds and declares that a special law
32 is necessary and that a general law cannot be made applicable
33 within the meaning of Section 16 of Article IV of the California
34 Constitution because of the unique need for alternative contracting
35 authority for local public transportation projects under the
36 jurisdiction of the San Diego Association of Governments.

37 SEC. 3. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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